

Jennifer MacDonald

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To: Josh Lipsky <jlipsky@brmlaw.com>, Rodney Brown
<rbrown@brmlaw.com>, Chuck Blumenfeld <blumc@perkinscoie.com>
cc: Christy Brown/R10/USEPA/US@EPA
Subject: Fmr. Rhone-Poulenc Facility - Second Amendment to AOC

WA 2302
3-5-03
14c

We have reviewed the information submitted to EPA by Mr. George Goodridge of BayerCropScience Inc. concerning the successors of Rhone-Poulenc Inc. That information is helpful, but it is only a summary and it still leaves some questions unanswered. These questions include:

When the January 1, 1998 transfer of two divisions of Rhone-Poulenc Inc. to create Rhodia Inc. occurred, did the reformulated Rhone-Poulenc Inc. and new Rhodia Inc. represent all of the former Rhone-Poulenc Inc.'s business interests in the U.S.? Or did the French parent, Rhone-Poulenc S.A., transfer other U.S. assets/business to other entities? If the latter is the case, what assets/business were transferred to what entities?

When Rhone-Poulenc Inc. changed its name to Rhone-Poulenc Ag Company Inc. on July 27, 1998, is that all that happened? Did the underlying business of Rhone-Poulenc Inc. remain the same (i.e., was it unaffected by the name change)? Did Rhone-Poulenc Ag Company Inc. exist prior to this date? (Some of the Secretary of State filings available for Rhone-Poulenc Ag Company Inc., such as Pennsylvania, list the company's origination date as 1980).

We are confused by the events that occurred in January 2000. Publicly available information shows that at least three separate companies sharing the name "Aventis CropScience" and same mailing address in Research Triangle Park, NC were created in late 1999 -- Aventis CropScience USA, Inc., Aventis CropScience USA LP, and Aventis CropScience USA Holding Inc. [emphasis added]. In addition, it appears that Aventis Environmental Science USA LP with a mailing address in Research Triangle Park, NC was also created in late 1999. Finally, a Connecticut Secretary of State filing exists for Aventis CropScience USA Holding LP, organized in Delaware on January 1, 2000, with the same mailing address as the other Aventis CropScience and Aventis Environmental entities.

Enclosed with Mr. Goodridge's February 18, 2003 letter is a certificate that states that Rhone-Poulenc Ag Company Inc. changed its name to Aventis CropScience USA, Inc. on January 5, 2000; then Aventis CropScience USA Inc. changed its name to Bayer CropScience Inc. In the letter that Mr. Goodridge wrote to Christy Brown on February 16, 2000, however, Mr. Goodridge stated that "substantially all of the assets [of Rhone-Poulenc Ag Company Inc.] were transferred to Aventis CropScience USA LP. . . ." [emphasis added]. Based on these statements and the publicly available information, we believe that the business operations of Rhone-Poulenc Ag Company Inc. were transferred in at least some part to all of these Aventis CropScience entities.

Similarly, we are confused by the events that occurred in 2002. It appears that at least three separate companies sharing the name "Bayer CropScience" and same mailing address (Research Triangle Park, NC) were created — Bayer CropScience Inc., Bayer CropScience LLC, and Bayer CropScience LP. [emphasis added]. In addition, it appears that Starlink Logistics Inc. with the

same mailing address as the Bayer CropScience entities was also created. A number of the Secretary of State filings for Starlink Logistics Inc. indicate that its prior name was Aventis CropScience USA Holding Inc. From the information currently available, it appears that the original business operations of Rhone-Poulenc Ag Company Inc. were transferred again in at least some part to all three of these Bayer CropScience entities and, perhaps, also to the Starlink Logistics Inc. entity.

Based on the information made available by Mr. Goodridge and public sources, we cannot determine where the business interests of original Rhone-Poulenc, Inc. went. Depending on the answers to our questions above, we can see at a minimum that at least three companies are likely liable as successors to Rhone-Poulenc Inc. These three companies are BayerCropScience Inc., Bayer CropScience LLC, and Bayer CropScience LP. We reserve judgment on whether Starlink Logistics Inc. should be regarded as liable, as well.

Thus, we propose that at least these three companies be added to the Second Amendment as indicated in the attached document. Please respond to our questions and contact me to discuss this further. I look forward to hearing from you.

-Jennifer


2nd amdmnt 030403.wpd

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1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
2 REGION 10
3 1200 SIXTH AVENUE
4 SEATTLE, WASHINGTON

5 IN THE MATTER OF:)

6 Rhone-Poulenc Inc.)
7 (jointly and severally its successors Bayer)
8 CropScience LLC, Bayer CropScience LP, and)
9 Bayer CropScience Inc.))
10 Rhodia Inc.)
11 Container Properties, L.L.C.)
12 Marginal Way Facility)
13 Seattle, Washington)
14 (WAD009282302))

Respondent)

Proceeding Under Section 3008(h) of the)
Solid Waste Disposal Act, commonly known)
as the Resource Conservation and Recovery)
Act, as amended, 42 U.S.C. § 6928(h))

U.S. EPA Docket No.
1091-11-20-3008(h)

15 SECOND AMENDMENT TO
16 ADMINISTRATIVE ORDER ON CONSENT
17 FOR CORRECTIVE ACTION

18 1. This Second Amendment modifies the Administrative Order on Consent, No. 1091-11-20-
19 3008(h) ("Consent Order") for Corrective Action Activities at the former Rhone-Poulenc Inc.
20 Marginal Way Facility ("Facility") in Seattle, Washington, pursuant to Section XXIV of the Consent
21 Order (Modification).

22 2. The following entities are liable parties pursuant to the Consent Order, originally executed
23 May 6, 1993, and first amended February 17, 1999: Container Properties, L.L.C., Rhodia Inc., and all
24 successors to Rhone-Poulenc Inc., including but not limited to Bayer CropScience LLC, Bayer
25 CropScience LP, and Bayer CropScience Inc. These liable parties are jointly and severally
26 "Respondent" under the Consent Order with the United States Environmental Protection Agency
27 ("U.S. EPA").

28 **Second Amendment to Consent Order for Corrective Action**
Rhone-Poulenc Inc.
EPA Docket No. 1091-11-20-3008(h)

1 3. The Consent Order requires Respondent to maintain financial security in the amount of \$7
2 million.

3 4. Currently the financial security required by the Consent Order is in the form of a trust
4 fund.

5 5. Respondent submitted an Interim Measures Construction Work Plan in response to the
6 U.S. EPA's March 13, 2000 Request for an Interim Measures Workplan pursuant to Paragraphs 6.4,
7 6.5, and 6.6 of the Consent Order. The U.S. EPA conditionally approved the Interim Measures
8 Construction Work Plan on December 4, 2002 ("IM Work Plan"). Preparation and implementation
9 of the IM Work Plan has been estimated to cost approximately \$ 3.5 million according to the
10 Detailed Cost Estimate for Hydraulic Control Interim Measures and Final Corrective Action dated
11 July 25, 2002, and prepared by Respondent.

12 6. Respondent and the U.S. EPA have agreed that financial security under the Consent Order
13 may be reduced by the amount to be spent by Respondent on the interim measure described in the IM
14 Work Plan in the amount of \$3.5 million, under the following conditions:

15 a. The financial security will be released in the amount of \$3.5 million upon confirmation by
16 U.S. EPA that on-site physical construction of the Interim Measure has commenced; and

17 b. Unless Respondent withdraws its consent to implement the Corrective Measure in
18 accordance with Paragraphs 6.27, 6.28, 6.29, and 18.6 of the Consent Order, Respondent agrees to
19 establish and maintain sufficient financial security to cover the full estimate for the final remedy or
20 corrective measure selected by the U.S. EPA in the Statement of Basis after completion of the
21 Corrective Measures Study.

22 7. In addition, Respondent and the U.S. EPA agree to amend the Consent Order to include a
23 process for increasing or reducing the financial security in the future without a formal amendment of
24 the Consent Order.

25 8. In order to reflect these modifications, and to clarify the term "Respondent" the following
26

1 changes are hereby made to the Consent Order:¹

2
3 The definition of the term "Respondent" as defined on page 7, Paragraph 33 of the Consent
4 Order is modified as follows:

5 Respondent shall mean Rhone-Poulenc Inc. (~~now known as Rhone-Poulenc Ag~~
6 ~~Company Inc.~~) ("RPI") jointly and severally with its successors including but not limited to Bayer
7 CropScience LLC, Bayer CropScience LP, Bayer CropScience Inc., Rhodia Inc. and Container
8 Properties, L.L.C.

9
10 Paragraph 1.2 of the Consent Order:

11 1.2 This Consent Order is issued jointly and severally to Rhone-Poulenc Inc., ~~now~~
12 ~~known as Rhone-Poulenc Ag Company Inc.~~, ("RPI"), and its successors, including but not limited to
13 Bayer CropScience LLC, Bayer CropScience LP, Bayer CropScience Inc., Rhodia Inc., ~~former~~
14 ~~owners and former controlling entities~~, and Container Properties, L.L.C., the current owner and
15 controlling entity of the former RPI facility located at 9229 East Marginal Way South, Tukwila,
16 Washington (RPI, Bayer CropScience LLC, Bayer CropScience LP, Bayer CropScience Inc., Rhodia
17 Inc., and Container Properties, L.L.C. are herein referred to jointly and severally as "Respondent").

18
19 Section XXIII (Financial Responsibility):

20 23.3 Each financial instrument obtained pursuant to this Section must be established
21 and used solely for the purpose of conducting the activities required by this Consent Order at and for
22 this Facility. Each financial instrument submitted to U.S. EPA for approval pursuant to this Section
23 shall satisfy the requirements for financial assurance instruments for closure specified at 40 C.F.R.
24 § 264.151, except that references to closure and closure regulatory requirements shall be revised to

25
26 ¹Additions are marked by redline, deletions are marked by ~~strikeout~~.

1 refer to the Work required by this Consent Order. Each financial assurance instrument established
2 and maintained by Respondent in accordance with this Section must allow the funds provided by the
3 financial assurance to be available in the event that Respondent proves unable or unwilling to
4 undertake any actions prescribed in this Consent Order while it is in effect so that the activities
5 covered by the instrument may be completed by Respondent, U.S. EPA or others, as determined by
6 U.S. EPA. The phrase "actions prescribed in this Consent Order" as used in the previous sentence
7 does not include the Corrective Measure Implementation ("CMI") in the event that Respondent
8 withdraws its consent to implement the Corrective Measure in accordance with Paragraph 6.27, 6.28,
9 6.29, and 18.6.

10 **23.4 Reduction of Financial Assurance for Interim Measures Work - U.S. EPA**
11 will direct the appropriate party to release \$ 3.5 million to Respondent upon confirmation by U.S.
12 EPA that on-site physical construction of the interim measure specified in the Interim Measures
13 Construction Work Plan conditionally approved by U.S. EPA on December 4, 2002, has
14 commenced.

15 **23.5.** Unless Respondent has withdrawn its consent to implement the Corrective
16 Measure in accordance with Paragraph 6.27, 6.28, 6.29, and 18.6, Respondent must establish and
17 maintain financial security sufficient to provide financial assurance for the CMI. Within thirty (30)
18 days of U.S. EPA approval of the CMI Workplan, Respondent must submit to U.S. EPA for review
19 and approval, a draft instrument in the form and manner specified in Paragraph 23.1 of this Section,
20 for financial security in at least the amount of the U.S. EPA approved cost estimate for the selected
21 Corrective Measure. Within ten (10) days of U.S. EPA approval of the financial instrument,
22 Respondent shall establish financial security in accordance with U.S. EPA's approval

23 **23.6.** In the event that U.S. EPA determines at any time that the financial security
24 provided pursuant to this Section is inadequate to assure that the Work required by this Consent
25 Order will be completed in a timely manner, Respondent shall, within thirty (30) days of receipt of
26 notice of such determination by U.S. EPA, obtain and present to U.S. EPA for review and approval a

1 draft instrument for an increased amount of financial security in the form and manner specified in
2 Paragraph 23.1 of this Section. The phrase "Work required by this Consent Order" as used in the
3 previous sentence does not include the CMI in the event that Respondent withdraws its consent to
4 implement the Corrective Measure in accordance with Paragraph 6.27, 6.28, 6.29, and 18.6. Within
5 ten (10) days of U.S. EPA approval of the financial instrument, Respondent shall establish financial
6 security in accordance with U.S. EPA's approval.

7 23.7. The financial security required by this section must remain in force until U.S.
8 EPA determines that the requirements of the Consent Order have been fully satisfied or in
9 accordance with Paragraph 23.8.

10 23.8. If Respondent can show that the estimated cost to complete the remaining
11 Work has diminished below the amount set forth in the financial assurance instrument(s),
12 Respondent may, on any anniversary date of entry of this Consent Order, or at any other time agreed
13 to by U.S. EPA, request a reduction of the amount of the financial security provided under this
14 Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a
15 written proposal for such reduction to U.S. EPA. Upon and in accordance with written approval by
16 U.S. EPA, the amount of financial security may be reduced.

17 23.9. Respondent may change the form of financial assurance provided under this
18 Section at any time, upon notice to and approval by U.S. EPA, provided that the new form of
19 assurance meets the requirements of this Section.

20 9. This Second Amendment to the Administrative Order on Consent for Corrective Action is
21 effective on the date signed by U.S. EPA, Region 10's Director of the Office of Waste and Chemicals
22 Management.

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26 IT IS SO AGREED AND ORDERED

27 **Second Amendment to Consent Order for Corrective Action**
28 **Rhone-Poulenc Inc.**
EPA Docket No. 1091-11-20-3008(h)

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BY: _____
Richard Albright, Director
Office of Waste and Chemicals Management
United States Environmental Protection
Agency, Region 10

DATE: _____

The undersigned representative of a party to this Second Amendment to the Consent Order for a Corrective Action Activities at the former Rhone-Poulenc Inc. Marginal Way Facility, at 9229 East Marginal Way South, Seattle, Washington, certifies that he or she is fully authorized to enter into the terms and conditions of this Amendment and to execute and legally bind such party to this document.

FOR BAYER CROPSCIENCE LLC (SUCCESSOR TO RHONE-POULENC INC.):

BY: _____

DATE: _____

Name [please type]:

Title [please type]:

Address [please type]:

1
2 The undersigned representative of a party to this Second Amendment to the Consent Order for a
3 Corrective Action Activities at the former Rhone-Poulenc Inc. Marginal Way Facility, at 9229 East
4 Marginal Way South, Seattle, Washington, certifies that he or she is fully authorized to enter into the
terms and conditions of this Amendment and to execute and legally bind such party to this
document.

5 FOR BAYER CROPSCIENCE LP (SUCCESSOR TO RHONE-POULENC INC.):

6
7 BY: _____ DATE: _____

8 Name [please type]:

9 Title [please type]:

10 Address [please type]:

1 The undersigned representative of a party to this Second Amendment to the Consent Order for a
2 Corrective Action Activities at the former Rhone-Poulenc Inc. Marginal Way Facility, at 9229 East
3 Marginal Way South, Seattle, Washington, certifies that he or she is fully authorized to enter into the
4 terms and conditions of this Amendment and to execute and legally bind such party to this
5 document.

6
7 FOR BAYER CROPSCIENCE INC. (SUCCESSOR TO RHONE-POULENC INC.):

8 BY: _____ DATE: _____

9 Name: George S. Goodridge

10 Title: Corporate Secretary

11 Address [please type]:
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1 The undersigned representative of a party to this Second Amendment to the Consent Order for a
2 Corrective Action Activities at the former Rhone-Poulenc Inc. Marginal Way Facility, at 9229 East
3 Marginal Way South, Seattle, Washington, certifies that he or she is fully authorized to enter into the
4 terms and conditions of this Amendment and to execute and legally bind such party to this
5 document.

6 FOR RHODIA INC.:

7 BY: _____

DATE: _____

8 Name [please type]:

9 Title [please type]:

10 Address [please type]:

1 The undersigned representative of party to this Second Amendment to the Consent Order for a
2 Corrective Action Activities at the former Rhone-Poulenc Inc. Marginal Way Facility, at 9229 East
3 Marginal Way South, Seattle, Washington, certifies that he or she is fully authorized to enter into the
4 terms and conditions of this Amendment and to execute and legally bind such party to this
5 document.

6 CONTAINER PROPERTIES, L.L.C.

7 BY: _____

8 DATE: _____

9 Name [please type]:

10 Title [please type]:

11 Address [please type]:

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27 **Second Amendment to Consent Order for Corrective Action**
28 **Rhone-Poulenc Inc.**
EPA Docket No. 1091-11-20-3008(h)